IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12399 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DINESHKUMAR ASHOKBHAI JAIN THR' BROTHER SANDIP A. JAIN - Petitioner(s)

Versus

STATE OF GUAJRAT THR' ADDL. DIRECTOR & 3 - Respondent(s)

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Appearance :

MR HR PRAJAPATI for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1 - 2.
Mr.P.D.Bhate, AGP for Respondent(s) : 3,
M IA SHAIKH for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 06/09/2005

CAV JUDGMENT

1.By filing this petition, the petitioner detenu has challenged the detention order dated 11.5.2005

passed by the District Magistrate, Ahmedabad in exercise of the powers conferred upon her under sub-section(2) of Section 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (“the Act” for short), as, the District Magistrate, Ahmedabad acting under the Act arrived at the subjective satisfaction that it was necessary to prevent the detenu from acting in a manner prejudicial to the maintenance of supplies of essential commodities like Hydrocarbon petroleum solvent which is essential to the community.

2. Along with the detention order, the detenu was also served with the grounds of detention of the same date.

3. Heard the learned advocate appearing for the petitioner Mr.H.R.Prajapati, learned AGP Mr.Bhate for respondent nos.1, 2 and 3 and Mr.M.A.Shaikh for respondent no.4. Affidavit-in-reply filed on behalf of respondent No. 2 and counter affidavit on behalf of the Union of India were also taken into consideration.

4. Learned advocate appearing on behalf of the petitioner detenu raised manifold contentions. He has mainly contended that there is a delay in considering the representation made by the petitioner resulting into infringement of the right of the petitioner in making an effective representation.

5. Mr.Bhate, learned AGP appearing on behalf of respondent no. 1, 2 and 3 and Mr.Shaikh, learned Additional Standing Counsel for the Central Government have opposed this petition.

6. The main contention of learned advocate appearing for the petitioner is that there is unexplained delay in considering the representation by the Central Government. He has relied upon the affidavit filed on behalf of the Union of India, more particularly, para 5, which reads as under :

> “the representation dated 23.6.2005 made by the advocate of the detenu was received in the Central Government on 29.6.2005 through Office of the District Magistrate, Ahmedabad vide their letter dated 28.6.2005. After considering the representation along with reports and grounds of detention and other relevant records of the case, the same was rejected by the Competent Authority in the Central Government on 5.7.2005, 2.7.2005 and 3.7.2005 being Saturday and Sunday were closed holidays. The decision of the Central Government was conveyed to Superintendent, Jamnagar District Jail on 7.7.2005 by telegram with a direction to convey the same to the detenu.”

7. It can, therefore, be seen that no explanation is coming forward whatsoever on this aspect of delay in considering the representation made by the petitioner. It is well settled proposition of law that the delay would affect and infringe the right of the detenu of making an effective representation guaranteed under Article 22(5) of the Constitution of India. In this view of the matter, the impugned order is vitiated and the same is required to be quashed and set aside.

8. In view of what is stated above, the petition is allowed. The order of detention dated 11.5.2005 is quashed and set aside. The detenu Dineshkumar Ashokbhai Jain is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly. Direct service is permitted.

(SHARAD D DAVE, J)

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